



THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

**Branch of Natural Resources
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August 29, 2016

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

RE: Portland Harbor Proposed Plan

Dear Administrator McCarthy:

We appreciate the opportunity to comment on the Portland Harbor Superfund Site Proposed Plan (PP) dated June 2016 and supporting documents. The Confederated Tribes of the Warm Springs Reservation of Oregon (hereafter referred to as Warm Springs Tribe) have been an active partner and participant in the Superfund process for over a decade through an Memorandum of Understanding (MOU) signed in 2001 between our federal trustees, other tribes, and agencies within the State of Oregon. The intent of the MOU was to provide a framework for the signing parties to optimize federal, state, tribal, and trustee resources as well as expertise to investigate and cleanup Portland Harbor in the lower Willamette River.

On June 25, 1855, the Treaty with the Tribes of Middle Oregon (Treaty of 1855) was signed reserving all our rights to fish, hunt, gather plants and pasture livestock at all usual and accustomed stations held in common with the citizens of the United States. The degraded state of the Portland Harbor site (site) restricts our ability to exercise rights reserved in the Treaty of 1855. The Willamette River has been and continues to be of importance to the Warm Springs Tribe. The people of the Warm Springs Tribe lived in villages from the mouth of the Willamette River upstream to Willamette Falls for thousands of years. They were bound together by a common language, kinship, cultural practices and political ties. This area yielded vital and reliable resources that provided for commerce and a way of life that has been practiced from time immemorial to today and into the future. This includes the harvest of fish, game and collection of culturally significant plants for subsistence, religious, spiritual and medicinal purposes.

The Warm Springs Tribe is advocating for an aggressive remedy at the Portland Harbor Superfund site. This should include:

- Remediation actions that will lead to permanent cleanup of the site within 10 years through active removal of contaminated sediments;
- Use of best available science and when not available use assumptions that protect the environment;

- Elimination of fish consumption guidelines by decreasing contamination in fishes; and,
- Development of a robust, detailed monitoring plan.

None of the alternatives in the PP and Feasibility Study (FS) meet our vision for cleanup of the site. Alternative I, the preferred alternative identified in the PP, is concerning because it does not give us confidence environmental and human health risks will be eliminated post 10-years of construction. We do however acknowledge that dredging is not a viable option in all locations and therefore other remedies will need to be employed. This alternative is highly reliant on passive remedial technologies, primarily monitored natural recovery (MNR), enhanced monitored natural recovery (EMNR), and capping. All of which have associated risks and leave contaminants in the sediment.

The application of MNR and EMNR does not remove all contamination from the sediments; the performance and outcome is unknown; the dynamic nature of the Willamette River particularly in the face of climate change is not well understood; and long-term costs associated with monitoring these applications for perpetuity exist. The assumption that natural recovery will occur by the movement of clean sediments mixing with contaminated substrate leaves an unacceptable risk particularly since modeling efforts in the Willamette were unable to confidently predict particle movements. Both MNR and EMNR should only be used in areas that are known to be depositional or considered neutral. The designation of depositional and erosive area is not always clear in the PP and FS; therefore, in the remedial design, new data may need to be collected and new technologies assigned as appropriate. In the most contaminated areas, MNR and EMNR should not be considered.

A significant number of sites have been identified for capping. Capping assumes that partial removal of contaminated sediments can then be topped with various materials to create a protective cover. It will be important to ensure that the appropriate caps are assigned based on the contaminants present, for example, a reactive cap may not be appropriate in areas with metals present. Caps that are predominantly sand should incorporate organic materials to improve their ecological function. The Willamette River is home to the largest individual run of lamprey in the Columbia River Basin. Lamprey are reliant on finding burrowing habitats, and may select areas where capping has been implemented. The addition of organics will not only improve the function of caps but also improve burrowing locations. However, we are concerned that the depths of the caps are not adequate for lamprey. Currently, the proposed cap thickness is 12 inches. We recommend a minimum, total cap thickness of 16 inches to ensure lamprey are not burrowing into contaminated substrate.

It appears in Alternative I, only 33% of the groundwater plume will be addressed and remediation plans are only available for 65% of the upland areas. This is of concern since these are both pathways for contamination to reach the site. The PP describes the working relationship and responsibilities between Oregon Department of Environmental Quality (ODEQ) and EPA within the site. With few exceptions it is the responsibility of ODEQ to address the groundwater plume and upland areas. It is unclear the role of EPA if remedial designs do not adequately address contaminants entering the waterway. Without plans to address these, continued and re-contamination is possible.

Alternative I requires majority of the site to have long-term monitoring, maintenance and a guarantee of funding for perpetuity to ensure their effectiveness. It is important that post de-listing that the commitment of funding and maintenance continues. There are no assurances that MNR, EMNR, and capping will perform as expected since contaminated sediments are not being removed completely and there is no long-term information available that suggests their success. Because many of the most toxic

contaminants have long aquatic half-lives and will remain in the substrate, institutional controls (ICs) will continue to be necessary including fish consumption guidelines (FCG) and are likely to restrict access to waterways and land use.

Alternative G is the only defensible option within the PP and FS; however, it still poses risk. Alternative G is the only alternative that meets EPA threshold criteria of "Overall Protection of Human Health and the Environment" and "Compliance with ARARs".

Alternative G removes the most contaminants. Dredging to remove all contaminated materials should be the largest portion of remedy. Dredging should be considered in all locations over MNR, EMNR, and capping; even in nearshore areas. Where non-aqueous state liquids (NAPLs) and primary threat waste (PTW) are present, dredging should be the technology of choice to eliminate the risk of cap breaching and re-contamination. Further, we are concerned that in areas with the presence NAPLs and PTW, these contaminants, may move through sediments and cause re-contamination. In locations where nearshore structures are present, and dredging does not appear to be an applicable technique, removal of the structure(s) should be considered and completed to the extent practicable. While dredging is the most costly solution, it eliminates the long-term costs associated with MNR, EMNR, and caps for perpetuity and eliminates the need for ICs. Additionally, ICs are difficult to enforce and could compromise human health and environment post-cleanup and de-listing of the site. Removal of contaminated substrate has the highest environmental, human health, and economic benefit.

For materials removed during dredging, a confined disposal facility (CDF) could be developed on-site but would need assurances that the containment of contaminated materials would be secured for perpetuity. An off-site CDF also could present risks to both the Willamette and Columbia rivers. To determine a CDF location, EPA should conduct a risk analysis that takes into account: the permanence of containing contaminated sediments; the potential risks or benefits to each location; and characterization of the risk associated with the transport of these materials to the Willamette, Columbia and adjacent communities.

Without full removal of all contaminants that affect human health, FCG will not be eliminated for all portions of the consumer population. During the remedial design, FCG guidelines need to be updated to protect the tribal demographic and include the entire fish not just fillets. Additionally, the FCGs need to include migratory species, particularly lamprey and sturgeon, which are likely to spend multiple years within the site and are known to accumulate toxins based on high lipid content and species longevity. Because FCGs are hard to enforce, greater outreach and education need to be completed including notices in tribal media and in-community presentations.

Continued commitment to communication with the Tribe is essential through the remedial phase. These conversations should include continued engagement through the Trustee Council. This includes any request by the potentially responsible parties to deviate or request flexibility from assigned remedies. We appreciate the government-to-government engagement to date and encourage it to continue with more frequency. We would, however, like to remind EPA that trust obligation includes providing a tribal consultation and ability to comment prior to documents being released to the public for review and comment.

We acknowledge the large effort that has gone into the development of the PP and FS. Further, specific comments are attached in a combined memo from the five MOU signing tribal trustees (The Confederated Tribes of the Warm Springs Reservation of Oregon, The Confederated Tribes of the

Umatilla Indian Reservation, the Nez Perce Tribe, the Confederated Tribes of Siletz Indians, and Confederated Tribes of the Grand Ronde Community of Oregon). As proposed, preferred Alternative I, leans toward reduced costs for polluters without a guarantee that cleanup will be successful in the timeframe needed. Alternative G should not have been rejected based on cost to polluters and the period of construction. It appears that the criteria used to determine the preferred alternative is bias toward choosing a mid-level cleanup option by giving deference to an option that has short-term impacts during the construction phase.

The United States has a treaty trust obligation to restore the site and habitats to protect human health and promote a naturally functioning environment where traditional practices continue, knowledge can be passed to future generations and provide healthy, harvestable populations of culturally significant species for perpetuity. We expect EPA to hold the responsible parties accountable and use enforcement as necessary to remedy damages to tribal resources by:

- Completing cleanup in a reasonable timeline of 10 years post-construction;
- Removal of contaminated sediments by dredging at all practicable locations with less reliance on MNR, EMNR, and capping;
- Elimination of fish consumption guidelines for all fishes within the Portland Harbor;
- Development of a monitoring plan with appropriate deliverables and timelines;
- Commitment from the United States government that post de-listing of the site, monitoring, maintenance and associate funding will continue to ensure the permanence of remedial actions; and,
- Continued communication, at all levels, with the Warm Springs Tribe.

Threats to treaty reserved rights and human health need be taken into account during the development of the Record of Decision and remedial designs.

Regards,

A handwritten signature in cursive script, appearing to read "Robert A. Brunoe".

Robert A. Brunoe, General Manager
Branch of Natural Resources
Confederated Tribes of the Warm Springs Reservation of Oregon